

**Remarks of Chief Justice J. Derek Green**

**On the passing of John G. Kelly,  
a senior member of the Law Society**

**Court of Appeal**

**St. John's, NL**

**September 6, 2016**

This is the first sitting day of the fall term of the Court. Before commencing the Court's regular business I propose to take a few minutes to record the fact of, and to reflect on, the death of **John G. Kelly** who passed away on April 6 of this year after experiencing failing health in recent years.

I notice, and welcome in the Court, Mr. Barry Fleming, President of the Law Society.

John Kelly was a well-known and respected member of the Bar of Newfoundland and Labrador for 45 years. He was born in St. John's but grew up in Aguathuna on the west coast. He graduated with a B.A. from Memorial University in 1967. He received his law degree from Dalhousie University in 1970 and was called to the Bar on April 15 of the following year after articling with former Chief Justice Clyde Wells at the firm of Barry Wells Doucette in Corner Brook.

During his career he practiced mainly criminal law but also handled many family cases. He worked in the Department of Justice as a Crown prosecutor and ultimately rose to hold the most important office in the prosecutorial service, Director of Public Prosecutions. That is an office of power and discretion and hence, one of great responsibility. He discharged his duties with great integrity, acting in the true tradition of the Crown as prosecutor, not seeking to obtain a conviction at all costs but seeking to ensure justice was done in all cases, to accused, victims and the public alike. That even-handedness was demonstrated in an appearance in the Court of Appeal on March 12, 1976 in respect of four sentence appeals.<sup>1</sup> Coincidentally, that appearance marked the first day of operation of – and the first cases heard by – the newly constituted Court of Appeal under the 1974 reform legislation.<sup>2</sup> The cases involved appeals by the Crown on the basis that sentences imposed at trial were inordinately low, DPP Kelly, however, brought to the attention of the Court that the original information grounding the original charges was in his

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<sup>1</sup> *R. v. Barrington*, 1975/690; *R. v. King*, 1975/691; *R. v. Conway*, 1975/689; and *R. v. Hennebury*, 1975/688

<sup>2</sup> S.N. 1974, No. 57. For the history of the development of the changes to the Court's structure at that time, and John Kelly's role in the cases on the first day of the Court's operation, see my Remarks "On the Occasion of a Special Sitting of the NL Court of Appeal to Mark the 40<sup>th</sup> Anniversary of the First Sitting of the Court..." (March 17, 2016), posted on the Court of Appeal's website, under "Judicial Speeches".

view defective and was not capable of amendment. As a result, he invited the Court, even though the accused had not appealed convictions, to quash the convictions and discharge them. The Court agreed, thereby averting a potential injustice.

John resigned as DPP in the late 1970s and engaged in criminal defence work, which eventually became a thriving practice. He worked in the law office of the late Richard Greene Q.C. and others and in May of 1986 he entered partnership with well-known defence counsel, Randy Piercey Q.C., and Peter Kearsey under the firm name then known as Kelly, Piercey, Kearsey. After Peter Kearsey left the firm a few years later, John remained in partnership with Randy Piercey until John's death this year, a fruitful partnership of 30 years.

During his years acting as defence counsel, he acted in many high profile criminal cases<sup>3</sup>. Many of his cases were not publicly popular. The prospect of public opprobrium did not deter him from taking the cases or from doing all he could to represent his clients to the fullest. He was a true barrister who took his job as counsel very seriously.

A perusal of the reported cases in the law reports, especially, the ones where multiple applications, both procedural and substantive, were made on behalf of individual clients will disclose John Kelly's dogged determination not to leave any stone unturned on behalf of his clients. They are in truth an excellent illustration of the engaged defence counsel at work in the best traditions of the Bar.

His presence was always felt in the courtroom, not only for his quirky habit of wearing a bow tie and his humorous way of expressing himself, both to other lawyers and also to the judges as part of his argument, but it was obvious the respect the judiciary had for him and his submissions, which were always to the point and unembellished with weak or untenable argument.

Despite his success and prowess at the Bar, John was never made a Queen's Counsel. That was not because he did not deserve one or that he was overlooked. I am personally aware that he was offered a Q.C. many years ago but for his own reasons turned it down. I remember during a Q.C. ceremony over which I presided in the mid-1990s, I reminded those present that not all barristers deserving of the honour agree to accept the designation. That was a reference to John Kelly.

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<sup>3</sup> *R. v. D.P.F.* (1999), 171 Nfld. & P.E.I.R. 183 (NFCA), aff'd [1999] 3 S.C.R. 662 (challenge to jury conviction; overturned and new trial ordered because of errors in jury charge); *R. v. Rizzuto*, [1990] N.J. No. 248 [QL] (unsuccessful challenge to a decision of a preliminary inquiry ordering client to stand trial). Only the Court of Appeal cases are mentioned here. There are innumerable other cases involving the same clients in the Trial Division: see for example (1990), 86 Nfld. & P.E.I.R. 206 (Nfld. S.C.) or (1990), 86 Nfld. & P.E.I.R. 210 (Nfld. S.C.). See also *R. v. Buckingham*, 2007 NLTD 207 (successful application for a directed verdict on five counts of drug trafficking) and 2008 NLTD 55 (successful application for directed verdict on fraud charges). Other examples of applications respecting this client can also be found in the law reports.

At the time of his passing last April, many people spoke of John's contribution to the law and administration of justice in this community. I can do no better than to repeat some of the outpouring of comments that were made at that time. They are themselves a testament to the high regard in which he was held. The Law Society issued the following statement: "John was a highly respected lawyer and his dedication to the practice of law and knowledge of the legal system was remarkable."<sup>4</sup> *The Telegram*<sup>5</sup> described him as "a passionate defence lawyer" and "one of the province's most respected and hard-nosed lawyers, yet also one of the most personable." Long-time friend, Peter Ralph described him as "one of the funniest people I knew"<sup>6</sup> and noted his willingness to help younger lawyers with their practice.

Finally, I will end with a comment of my own, made at the time of his death and quoted in *The Telegram*: "John was an excellent lawyer who contributed a lot to the justice system in the province, both in his capacity as a private lawyer as well as a former Director of Public Prosecutions."

The Bench and the Bar will miss him

I direct that a transcript of these remarks be prepared and sent to his family and law partner.

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<sup>4</sup> Law Society of Newfoundland and Labrador website: <http://www.lawsociety.nf.ca/notice-late-john-kelly/>

<sup>5</sup> *The Telegram* (St. John's), April 7, 2016.

<sup>6</sup> Quoted in *Telegram* article, above